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| 10/541,217 | 01/06/2006 | Guy Derrieu | 11016-0042 | 4557 |
| 22902 | 7590 | 12/28/2009 | EXAMINER | |
| CLARK & BRODY 1090 VERMONT AVENUE, NW SUITE 250 WASHINGTON, DC 20005 | | | PACKARD, BENJAMIN J | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1612 | |
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| | | | 12/28/2009 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/541,217

Applicant(s)

DERRIEU ET AL

Examiner

Benjamin Packard

Art Unit

1612

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 18-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17, 22 and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Applicants' arguments, filed 09/02/09, have been fully considered. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-5, 11-13, 17, 22, and 23 stand rejected under 35 U.S.C. 102(a) as being anticipated by Arnold et al (US 6,360,696, see IDS dated 6/30/05).

Applicants assert the chew toy is not "elongated" as required by instant claim 1, such that the two dihedron, the edges of which extend along the entire length of the object, given a star has no "length". Applicants also assert dicalcium phosphate is disclosed as an excipient without therapeutic, remedial, or preventative activity or an anti-tartar activity reinforcing the dental structure.

Examiner disagrees. First, a two dimensional star would have no depth, but the disclosed star of Arnold et al is not two dimensional, but a three dimensional chew toy, as seen in figure 1. Thus, the star is "elongated" along the depth, where the angle region extends from the front to the back of the toy. Note, the term "elongated" is not specifically defined in the specification, therefore Examiner interprets the term to be any length of the shape, such as disclosed in the prior art.

Second, dicalcium phosphate, or calcium monohydrogen phosphate, is construed to be a "remineralizing agent", given additional calcium will be exposed to the teeth. Further, such an agent reasonably appears to read on an active constituent, which can be defined as a chemical agent which acts against dental plaque (see instant claim 1). Examiner interprets such a phrase broadly to include not only biologically active agents, but agents which actively treat dental plaque, such as an abrasive removing plaque from the teeth.

Note, while instant claim 23 further defines the Markush group of instant claim 13, the defined groups need not be elected for claim instant 23 to be anticipated, e.g. i.e. the specific groups further defined by instant claim 23 need not be elected according to instant claim 13.

Claim Rejections - 35 USC § 103

Claims 6-10 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Arnold et al (US 6,360,696, see IDS dated 6/30/05) in view of Markham et al (US 4,802,444).

Applicants assert that Arnold et al is directed to a ferret chew toy and Markham et al is directed to a dog chew toy, and as such, the skilled artisan would not combine the art. Additionally, Applicants assert Markham does not teach dihedral extending perpendicular to the length of the object.

Examiner disagrees. First, while the art is directed to different animals, the secondary art was simply cited to disclose various shape of animal chew toys where the

secondary art teaches specific shapes can have dental cleaning benefits. The skilled artisan would understand that any animal with teeth would benefit from the various shapes which are designed to access the inner part of the teeth, including ferrets.

Second, the teaching of Markham was not relied upon for diherdrons extending perpendicular to the length of the object, but instead was relied upon for the specific angle which improve the dental properties of chew toys. Given the angles are provided by the secondary reference and the star shape is disclosed in the primary reference, the variation of shapes would be obvious, as long as the shape contains the requisite angle.

Claims 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arnold et al (US 6,360,696, see IDS dated 6/30/05) in view of Markham et al (US 4,802,444) and Rich (US 6,365,133).

Applicants assert Rich is not relevant as it only teaches coating the exterior of the chew toy with toothpaste.

Examiner disagrees. First, the instant claims are directed to the composition of the matrix contain at least one abrasive agent. The instant claims do not recite where in the matrix the abrasive is required. Thus, the abrasive may be included on the surface of the matrix.

Second, even if Examiner were to narrowly interpret the instant claims, the chewable material of the prior art is disclosed in the examples, which may be construed as a "matrix". Thus, it would be obvious to combine both the matrix of toothpaste from Rich into the chew toys made obvious by Amole et al and Markham et al to make a new

matrix, wherein the shaped material incorporates the toothpaste, given the same function is met, i.e. when wetted the toothpaste provides additional dental hygiene care.

Conclusion

No claims allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin Packard whose telephone number is 571-270-3440. The examiner can normally be reached on M-F 8-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Benjamin Packard/
Examiner, Art Unit 1612

/Frederick Krass/
Supervisory Patent Examiner, Art Unit 1612